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**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** National Oceanic and Atmospheric Administration;  
S. M. Systems and Research Corp.--Request for  
Reconsideration

**File:** B-236477.3; B-236477.4

**Date:** May 15, 1990

Marc F. Efron, Esq., Crowell & Moring, for Science Systems and Applications, Inc., the protester.  
Timothy B. Harris, Esq., Wickwire Gavin, P.C., for S. M. Systems and Research Corporation, an interested party.  
James K. White, Esq., Office of the General Counsel, Department of Commerce, for the agency.  
Sylvia Schatz, Esq., Stephen Gary, Esq., and  
John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Decision sustaining protest that agency's failure to provide preaward notice of proposed award under small business set-aside resulted in improper circumvention of size status protest procedures, to the prejudice of the protester, is affirmed, where requests for reconsideration fail to specify errors of fact or law in original decision.
2. Arguments that agency could have presented, but did not present, during consideration of protest are not basis for reconsidering decision.
3. Where interested party was aware of protest but did not actively participate in process by presenting or responding to arguments, party is not eligible to request reconsideration of decision on protest.

### DECISION

The National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, and S. M. Systems and Research Corporation (SMSRC), request reconsideration of our decision, Science Sys. and Applications, Inc., B-236477, Dec. 15, 1989, 89-2 CPD ¶ 558, in which we sustained the protest of Science Systems and Applications, Inc. (SSAI),

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against the award of a contract to SMSRC under request for proposals (RFP) No. 52-DDNE-9-0004, issued by NOAA as a small business set-aside for software support.

We deny NOAA's request for reconsideration and dismiss SMSRC's request.

We sustained SSAI's protest on the ground that NOAA had violated Federal Acquisition Regulation (FAR) § 15.1001(b)(2), which specifically requires the contracting agency to inform each unsuccessful offeror in a small business set-aside of the name and location of the apparent successful offeror in writing prior to award; NOAA gave SSAI only post-award notice. Further, in light of the Small Business Administration's (SBA's) determination, in response to SSAI's post-award protest, that SMSRC was not eligible for the award because it was not a small business, we found that SSAI had been prejudiced by the agency's failure to comply with the FAR's notification requirement.

In its request for reconsideration, NOAA essentially argues that SSAI was not prejudiced because its failure to receive preaward notice of the name of the apparent successful offeror did not prevent it from filing a timely size protest. In this regard, NOAA states that under the SBA regulations, 13 C.F.R. § 121.9 (1989), a protest of the small business status of another offeror will affect the procurement in question where it is filed within 5 working days of when the protester receives notice of the identity of the offeror being protested. NOAA further points out that while SSAI's protest was filed within 5 working days of when SSAI received written notice of the award to SMSRC, SSAI had first received oral notice of the award 2 days prior to its receipt of written notice. According to the agency, SSAI's post-award protest therefore was untimely and therefore it could not have been prejudiced by NOAA's failure to provide preaward notice of the selection of SMSRC.

Our Bid Protest Regulations, however, do not permit a piecemeal presentation of evidence, information, or analysis. Where a party submits in its request for reconsideration arguments that it could have presented at the time of the protest, but did not, the arguments do not provide a basis for reconsideration. See Inter-Continental Equip., Inc.--Recon., B-230266.3, Apr. 6, 1988, 88-1 CPD ¶ 343. In its report on SSAI's protest, NOAA raised several arguments concerning the applicable regulations and prejudice, and clearly could have raised the arguments it presents here. Because it did not do so, the argument is not a basis for reconsideration at this point.

In any event, we do not find NOAA's position persuasive. As we stated in our decision in connection with another argument that SSAI had not been prejudiced by NOAA's failure to provide preaward notice, in the absence of clear evidence that a bidder has not been prejudiced by an agency's failure to give it the required preaward notice, we will assume that prejudice has resulted. As we also stated in our decision, in our view, the size status procedures (which include the prescribed periods for filing protests) are premised on agency compliance with the basic requirement for preaward notice; at the time SSAI received notice of the award, it already had been denied the opportunity to file a timely preaward size protest as contemplated by the regulations, and therefore had already suffered prejudice (whatever the available post-award remedies). As we stated, in the absence of compliance with the requirement for preaward notice, we will not speculate as to what might have happened had timely notice been furnished the protester.<sup>1/</sup>


SMSRC is not eligible to request reconsideration. Our Regulations permit the protester and "any interested party who participated in the protest" to request reconsideration. 4 C.F.R. § 21.12(a) (1989). In promulgating this provision, we intended to limit reconsideration requests to parties with a sufficient interest in the matter, who engaged in the effort necessary to reasonably participate in the protest process before a decision was reached, thus minimizing the possible disruption to the procurement process that could result from a decision on reconsideration. Woodington Corp.--Recon., B-235957.2, Nov. 15, 1989, 89-2 CPD ¶ 461. Thus, where a party is on notice of a protest, that party's failure to participate actively in the original proceedings

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<sup>1/</sup> Furthermore, we note that the SBA itself, both initially and on appeal, has found SSAI's size protest to be timely. The SBA has determined that, inasmuch as its own regulations are silent regarding the type and the timing of the notice that is required under the size status protest procedures, the more explicit requirements of the FAR for written preaward notification are controlling; according to the SBA, in the absence of the required preaward notice required by the FAR, SSAI's size protest was timely because it was filed within 5 days of receipt of written notification of the award.

precludes it from requesting reconsideration. Tandem Computers, Inc.--Request for Recon., B-221333.2 et al., Sept. 18, 1986, 86-2 CPD ¶ 315; see also J.W. Cook, Inc.--Request for Recon., 67 Comp. Gen. 366 (1988), 88-1 CPD ¶ 319.

Here, SMSRC was aware of SSAI's protest, and filed an appearance as an interested party in the matter. However, the firm chose not to submit arguments or comments on the merits of the protest. We therefore dismiss SMSRC's request.

  
for James F. Hinchman  
General Counsel